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STATE OF CALIFORNIA

Fish and Game Commission

February 18, 2011

This is to provide you with a copy of the notice of proposed regulatory action relative to Section 7.50, Title 14, California Code of Regulations, relating to Klamath River sport fishing, which will be published in the California Regulatory Notice Register on February 18, 2011.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Mr. Mark Pisano, Acting Fisheries Program Manager, Northern Region, Department of Fish and Game, phone (530) 225-2280, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215 and 316.5, of said Code, proposes to amend Section 7.50, Title 14, California Code of Regulations, relating to Klamath River Sport Fishing Regulations.

Informative Digest/Policy Statement Overview

The Klamath River System, which consists of the Klamath River and Trinity River basins, is managed through a cooperative system of State, Federal, and Tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean recreational, ocean commercial, river recreational and Tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon recreational (inside three miles) and the Klamath River System recreational fisheries which are consistent with federal fishery management goals.

Two Tribal entities within the Klamath River System, the Hoopa Valley Tribe and the Yurok Tribe, maintain fishing rights for ceremonial, subsistence and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok Tribes.

Klamath River Fall-Run Chinook

Klamath River fall-run Chinook salmon (KRFC) harvest allocations and natural spawning escapement goals are established by the PFMC. The KRFC harvest allocation between Tribal and non-Tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The 2011 KRFC in-river recreational fishery allocation recommended by the PFMC is currently unknown. All proposed closures for adult KRFC are designed to ensure sufficient spawning escapement in the Klamath basin and equitably distribute harvest while operating within annual allocations.

Klamath River Spring-Run Chinook

The Klamath River System also supports Klamath River spring-run Chinook salmon (KRSC). Naturally produced KRSC are both temporally and spatially separated from KRFC in most cases. In addition to natural stocks, the California Department of Fish and Game's (Department) Trinity River Hatchery facility produces 1.4 million KRSC salmon annually as mitigation for habitat lost above the Trinity Dam.

Presently, KRSC stocks are not managed or allocated by the PFMC. The in-river recreational fishery is managed by general basin seasons, daily bag limit and possession limit regulations. KRSC harvest will be monitored on the lower Klamath River in 2011 and ensuing years by creel survey.

KRFC Allocation Management

The 2010 allocation for the Klamath River System recreational harvest was 12,000 adult KRFC. Preseason stock projections of 2011 adult KRFC abundance will not be available from the PFMC until March 2011. The 2011 basin allocation will be recommended by the PFMC in April 2011 and presented to the Commission for adoption prior to its April 2011 teleconference call.

For public notice requirements, the Department recommends the Commission consider an allocation range of 0 – 40,000 adult KRFC in the Klamath River basin for the river recreational fishery. This recommended range encompasses the historical range of the Klamath River basin allocations and allows the PFMC and Commission to make adjustments during the 2011 regulatory cycle.

The Commission may modify the KRFC in-river recreational salmon harvest allocation which is normally 15% of the non-Tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the PFMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries.

The annual KRFC in-river harvest allocation is split into 4 geographic areas with sub-quotas assigned to each. They are as follows;

1. for the main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec 17% of the recreational fishery allocation,
2. for the main stem Klamath River from downstream of the Highway 96 bridge at Weitchpec to the mouth 50% of the recreational fishery allocation,
3. for the Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat 16.5% of the recreational fishery allocation, and
4. for the Trinity River downstream from the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River 16.5% of the recreational fishery allocation.

The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth), closes to all fishing after 15% of the lower Klamath River sub-quota (area number 2 above) has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River System recreational fishery allocation will be met. This closure is intended to prevent excessive take near the mouth where fish are concentrated and will help to provide an equitable distribution of KRFC harvest in the upper river.

These geographic areas are based upon historical angler effort distribution and ensure equitable harvest of adult KRFC in the upper Klamath River and Trinity River. The sub-quota system requires the Department to monitor angler harvest of adult KRFC in each geographic area. All areas will be monitored on a real time basis except for the following:

Klamath River upstream of Weitchpec and the Trinity River: Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest

monitoring in the Klamath River upstream of Weitchpec and in the Trinity River for the 2011 season. The Department has reviewed salmon harvest and run-timing data for these areas. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates historic creel survey data from the Klamath River downstream of Iron Gate Dam to the confluence with the Pacific Ocean and the Trinity River downstream of Lewiston Dam to the confluence with the Klamath River. The HPM is driven by the positive relationship between KRFC harvested in the Klamath River and Trinity River. The HPM will be used by the Department to implement fishing closures to ensure that anglers do not exceed established sub-quota targets.

Current Recreational Fishery Management

The KRFC in-river recreational harvest allocation is divided into geographic areas and harvest is monitored under real time sub-quota management. KRSC in-river recreational harvest is managed by general season, daily bag limit and possession limit regulations.

The Department presently differentiates the two stocks by following dates:

Klamath River

1. January 1 through August 14 - General Season KRSC. For purposes of clarity, daily bag and possession limits apply to that section of the Klamath River downstream of the Highway 96 bridge at Weitchpec.
2. August 15 to December 31 - KRFC quota management.

Trinity River

1. January 1 through August 31 - General Season KRSC. For purposes of clarity, daily bag and possession limits apply to that section of the Trinity River downstream of the Old Lewiston Bridge to the confluence with the South Fork Trinity River.
2. September 1 through December 31 - KRFC quota management.

The daily bag and possession limits apply to both stocks within the same sub-area and time period.

Proposed Changes

The Department is proposing the following changes to current regulations:

No changes are proposed for the general (KRSC) opening and closing season dates.

KRFC Season, Bag Limit, and Possession Limit

For public notice requirements, a range of KRFC bag and possession limits are proposed until the 2011 basin quota is adopted. As in previous years, no retention of adult KRFC salmon is proposed for the following areas, once the sub quota has been met.

The proposed open seasons and range of bag limits for KRFC salmon stocks are as follows:

1. Klamath River - August 15 to December 31
2. Trinity River - September 1 to December 31
3. Bag Limit - [0-4] Chinook salmon - only [0-3] fish over 22 inches total length until sub quota is met, then 0 fish over 22 inches total length.

The possession limit is proposed as a range of [0-9] Chinook salmon of which [0-6] over 22 inches total length may be retained when the take of salmon over 22 inches total length is allowed.

Removal of Section 7.50 subsection (b)(91.1)(E)6.c., Canyon Creek, from regulations pertaining to anadromous waters of the Klamath River basin

Section 7.50 subsection (b)(91.1) is intended to regulate all anadromous waters of the Klamath River basin. Pursuant to the first paragraph of Section 7.50 subsection (b)(91.1)(E), the anadromous waters of Canyon Creek are closed to all angling. The waters of Canyon Creek upstream of the falls located about four miles north of the wilderness area boundary are non-anadromous waters, but have been inappropriately included in the anadromous Klamath River basin regulations. The Department wishes to correct this discrepancy by relocating the subsection concerning the non-anadromous waters of Canyon Creek from Klamath Basin regulations and appropriately adding it to the Alphabetical List of Waters with Special Regulations as Section 7.50 subsection (b)(35.6).

Minor changes are also proposed to improve the clarity and consistency of the regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Embassy Suites Los Angeles International Airport-North, 9801 Airport Boulevard, Los Angeles, California, on Thursday, March 3, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard. ✓

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lake Natoma Inn, 702 Gold Lake Drive, Folsom, California, on Thursday, April 7, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard. ✓

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Fish and Game Commission Conference Room, State of California Resources Building, 1416 Ninth Street, Room 1320, Sacramento, California, on Thursday, April 21, 2011, at 8:30 a.m., or as soon thereafter as the matter may be heard. ✓ It is requested, but not required, that written comments be submitted on or before April 15, 2011 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 20, 2011. All comments must be received no later than April 21, 2011, at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Jon K. Fischer, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Jon K. Fischer or Sherrie Fonbuena at the preceding address or phone number. **Mr. Mark Pisano, Acting Fisheries Program Manager, Northern Region, Department of Fish and Game, (530) 225-2280, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are projected to have an unknown impact on the net revenues to businesses servicing sport fishermen. This is not likely to affect the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River Basin businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: February 8, 2011

Jon K. Fischer
Acting Executive Director